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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,349	03/20/2001	Nick J. Huige	661005.90951	1593

26710 7590 11/21/2002

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EXAMINER
SHERRER, CURTIS EDWARD

ART UNIT	PAPER NUMBER
1761	3

DATE MAILED: 11/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/812,349	HUIGE ET AL.	
	Examiner	Art Unit	
	Curtis E. Sherrer	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)[x] Responsive to communication(s) filed on *03 October 2002* .

2a)[ ] This action is **FINAL**. 2b)[x] This action is non-final.

3)[ ] Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)[x] Claim(s) *1-30* is/are pending in the application.

4a) Of the above claim(s) *10-29* is/are withdrawn from consideration.

5)[ ] Claim(s) _____ is/are allowed.

6)[x] Claim(s) *1-9 and 30* is/are rejected.

7)[ ] Claim(s) _____ is/are objected to.

8)[ ] Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)[ ] The specification is objected to by the Examiner.

10)[ ] The drawing(s) filed on _____ is/are: a)[ ] accepted or b)[ ] objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)[ ] The proposed drawing correction filed on _____ is: a)[ ] approved b)[ ] disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)[ ] The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)[ ] Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)[ ] All b)[ ] Some * c)[ ] None of:

1.[ ] Certified copies of the priority documents have been received.

2.[ ] Certified copies of the priority documents have been received in Application No. _____ .

3.[ ] Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)[ ] Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) [ ] The translation of the foreign language provisional application has been received.

15)[ ] Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) [x] Notice of References Cited (PTO-892)
2) [ ] Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) [x] Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 .
4) [ ] Interview Summary (PTO-413) Paper No(s). _____ .
5) [ ] Notice of Informal Patent Application (PTO-152)
6) [ ] Other: .

DETAILED ACTION

Election/Restrictions

Applicant's election of claims 1-9 and 30 in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-9 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney (people.cornell.edu/page/bjm10/blort/Drake.htm).

Maloney teaches that, beginning as early as the 16th century, "wort would be cleared with the aid of oak boughs added to steep for a time and removed before the boil." (Bottom of page 1). While Maloney does not teach that the oak was added in chip form, it is notoriously well

known to use oak in chip form, when adding it in a brewing process. It would have been obvious to those of ordinary skill in the art to add the oak of Murphy in the form of chips because in this form, it is more easily transported and extracted by the wort.

With regard, to the specific type of oak, i.e., American or French, toasted or untoasted, these are the most commonly available and notoriously well known wood chips for brewers and therefore it would have been obvious to those of ordinary skill in the art to add these chips as the oak ingredient as taught by Murphy.

Applicants' attention is invited to *In re Levin*, 84 U.S.P.Q. 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

> This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. *In re Benjamin D. White*, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 U.S.P.Q. 267; *In re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 U.S.P.Q. 221.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer whose telephone number is 703-308-3847. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the

organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3602 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Curtis E. Sherrer
Primary Examiner
November 14, 2002

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Curtis E. Sherrer
Primary Examiner
November 14, 2002